

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 30-016-16-1-1-02107-16
Petitioner: Nancy A. Daw and Stephen L. Hoback, co-trustees of the Platinum Honor Revocable Trust
Respondent: Hancock County Assessor
Parcel No.: 30-01-35-300-013.000-016
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. Nancy A. Daw and Stephen L. Hoback, co-trustees for the Platinum Honor Revocable Trust, timely filed a notice for review with the Hancock County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2016 assessment year. The PTABOA issued its determination valuing the property as follows:

Year	Land	Improvements	Total
2016	\$146,500	\$1,800	\$148,300

2. The Trustees timely filed a Form 131 petition with the Board. On August 18, 2017, our designated administrative law judge, Timothy Schuster (“ALJ”), held a hearing. Neither he nor the Board inspected the property in question.

RECORD

3. The following individuals testified under oath: Nancy A. Daw and Stephen L. Hoback; Mary A. Noe, Hancock County Assessor; and Theresa Sweet, Hancock County Planning Commission.
4. Nancy A. Daw and Stephen L. Hoback appeared *pro se* and Marilyn S. Meighen appeared as the attorney for the Hancock County Assessor.
5. The property under appeal is located at 6579 W 650 N, McCordsville, Indiana 46055.

6. The Trustees offered the following exhibits:
Petitioners' Ex. 1: Memorandum explaining the Trustees' position.
7. The Respondent offered the following exhibits:
Respondent's Ex. A: Subject property record card,
Respondent's Ex. B: Photograph of the homesite on the property,
Respondent's Ex. C: Zoning information and aerial photograph of the subject property.
8. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memorandum issued by the Board or our administrative law judge; and (3) the digital recording of the hearing.

OBJECTIONS

9. The Trustees objected to Respondent's Exhibit B, a photograph of the subject property. They contend that the photograph is not a recent depiction of the homesite. According to the Trustees, the current condition of the house is considerably worse than the condition shown in the picture. The Assessor replied that the purpose of the photograph is to give the Board a general idea of the homesite. Although the Trustees did not cite to a specific rule of evidence, we interpret their objection as a relevancy objection. We note that the assessment of the house is not at issue. We find that the photograph is at least marginally relevant as it shows a portion of the homesite. Thus, we admit Respondent's Exhibit B into evidence.
10. The Trustees also objected to the zoning testimony from Theresa Sweet on the grounds that, "Hancock County has never used zoning maps as part of how they assess property. It has always been use." We again interpret this to be a relevancy objection. The Assessor responded that the Guidelines provide that one acre must be classified as a homesite if it is zoned for residential use. Zoning does play a factor in the assessment process, particularly when considering the subject property's use. *See* 2011 GUIDELINES, CH. 2 at 53. We overrule the Trustees' objection and admit Sweet's testimony into evidence.
11. On cross-examination, Daw asked the Assessor, Mary Noe, a question regarding the assessment of certain improvements on the subject property. The Assessor objected to the question on the grounds that it was irrelevant because the improvements were not at issue. The Trustees offered no response. We sustain the Assessor's objection.

CONTENTIONS

12. Summary of the Trustees' case:
 - a. The subject property consists primarily of agricultural land. It also is currently assessed with a one acre homesite, which is the only portion of the assessment that the Trustees are challenging. They argue that the homesite should be reclassified from a homesite to Type 5—Nontillable land. *Hoback testimony*.
 - b. In support of this, Hoback testified that the house structure has been unused since 2004 and there is no electricity, no septic, no well, no furnace, and all of the pipes have been torn out of the house. There are also several small farm-related buildings on the homesite, which Hoback testified were unusable and obsolete. He also testified that there was no driveway to any of the buildings because they have allowed weeds, grasses and trees to grow up. *Hoback testimony*.
 - c. Both Daw and Hoback testified that they had allowed a relative of Hoback's to store some personal items there prior to the assessment date at issue. Hoback also testified that one of the buildings was used for "holding stuff that goes with the classified forest." *Hoback testimony; Daw testimony*.
 - d. Finally, the Trustees also argued that the zoning of the property should not determine the classification of the one acre at issue. *Hoback argument*.
13. Summary of the Respondent's case:
 - a. Mary Noe, the Hancock County Assessor, testified about how she assessed the property. She noted that one acre was assessed as Land Type 9 –homesite. Theresa Sweet from the Hancock County planning commission testified that the homesite was zoned for residential use and no special exception had been requested or given. For that reason, the Assessor argued that the one acre at issue is properly assessed as a homesite. *Noe testimony; Sweet testimony; Meighen argument*.

BURDEN OF PROOF

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. Where an assessor has the burden and fails to meet it, the taxpayer may introduce evidence to prove the correct assessment. If neither party shows what the correct assessment should be, it reverts to the previous year's level. I.C. § 6-1.1-15-17.2(b).

15. The Trustees conceded that the burden of proof has not shifted. We agree and find the Burden of Proof rests with the Trustees. *Hoback testimony*.

ANALYSIS

16. The Trustees have requested that the one acre portion of the property that is currently assessed as Land Type 9—Homesite be reassessed as agricultural Type 5—Nontillable. While normally a party must present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has directed the Department of Local Government Finance (“DLGF”) to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
17. The Real Property Assessment Manual describes Type 9—Homesite land as: “one acre per dwelling on an agricultural property is classified as agricultural homesite land. The base rate for agricultural homesite is a flat rate determined by the assessing official.” *See* 2011 GUIDELINES, CH. 2 at 93.
18. The Trustees argue that because the house is uninhabited as well as uninhabitable, the one acre in question should be classified as nontillable land rather than as a homesite. They offered extensive testimony supporting the abysmal condition of the house. But, the habitability of the house is not determinative of whether a one acre homesite is applied to the assessment.
19. The Guidelines specify that one acre per dwelling must be classified as a homesite. *Id.* The Guidelines also define “dwelling” as “Any building or portion of a building designed or occupied in whole or in part as a place of residence.” 2011 GUIDELINES, GLOSSARY at 7. It is undisputed that the building in question was designed as a place of residence. The Trustees also failed to offer sufficient evidence that the building in question no longer meets the definition of dwelling. Thus, the guidelines mandate the property be assessed with a one acre homesite.

FINAL DETERMINATION

20. The Trustees failed make a prima facie case that the current assessment was incorrect, thus, we order no change to the assessment.

ISSUED: January 17, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.